

Appln No. 10/726,177
Amdt date March 20, 2006
Reply to Office action of October 19, 2005

REMARKS/ARGUMENTS

This amendment is submitted in response to the Office action dated October 19, 2005. Claim 17 has been cancelled without prejudice. Claims 1-3, 13, 15 and 18-20 have been amended. Claims 21-25 have been added to more completely cover certain aspects of the invention. Claims 1-16 and 18-25 are presently in the application. Pages 2 and 10 of the specification have been amended to correct a numbering error and to provide consistency between the text and the drawings.

On Page 2 of the Office action, claim 17 has been objected to. Claim 17 has been cancelled, and Applicant therefore respectfully requests that the objection to claim 17 be withdrawn. Claims 18-20, previously dependent on claim 17, have been amended to depend from other claims. Claim 15 is amended to correct a typographical error.

On Pages 2-4 of the Office action, claims 1-3 and 5-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,782,833 to Haider, and claims 4 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haider. Applicant respectfully traverses the rejection.

Claims 1 and 13, as amended, recite a closure element having "a lower side which contacts the rod." Haider teaches: "The cross-connector 44 has a top 46a that is flat and a bottom 46 that includes a longitudinal concave surface 47 (i.e., semi-cylindrical saddle or U-shaped surface) which engages the rod 11." Col. 4, Lines 46-50. Haider continues: "As the set screw 48 is tightened, the bottom of the set screw 58 comes into contact with the top of the cross-connector 44 forcing the housing upwardly or the rod downwardly or both until the rod is firmly captured between the head of the implanted screw (including the washer) and the cap." Col. 4, Line 65 - Col. 5, Line 3. This structure is shown in FIG. 2 of Haider, which shows the set screw (48) not contacting the rod (11) as required by claims 1 and 13.

As a result, the cited reference does not anticipate claims 1 and 13. In short, independent claims 1 and 13 define a novel and non-obvious invention over Haider. Dependent claims 2-12 and 18-25 are dependent from claim 1 and therefore include all the limitations of claim 1 and additional limitations therein. Dependent claims 14-16 are dependent from claim 13 and

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therefore include all the limitations of claim 13 and additional limitations therein. Accordingly, claims 2-12, 14-16 and 18-25 are also allowable over Haider, as being dependent from allowable independent claims 1 and 13, and for the additional limitations they include therein.

Claim 3 is amended to recite that a distance "from" the bottom of the U-shaped opening of the holding element to the support surface is smaller than the diameter of the rod. For this additional reason, claim 3 is believed to be patentable over Haider.

Based on the arguments asserted above, it is submitted that the present application is in condition for allowance. Applicant hereby respectfully requests reconsideration and allowance of claims 1-16, and 18-25.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By Mark Garscia

Mark Garscia
Reg. No. 31,953
626/795-9900

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